FILE COPY

IN THE

# Supreme Court of the United States

OCTOBER TERM, [redacted] 1958

No. [redacted] 75

AUGUST J. MILLS, SR.,

Petitioner,

*versus*

STATE OF LOUISIANA,

Respondent.

***PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.***

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Respondent.

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## *PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.*

---

August J. Mills, Sr., prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana, entered March 3, 1958 in the matter entitled *State of Louisiana vs. August J. Mills, Sr.*, being No. 43,972 of the docket of said Court, denying petitioner writs of certiorari, mandamus and prohibition in connection with his conviction and sentencing for contempt of Court for refusing to answer certain questions before a Grand Jury for the Parish of Orleans, State of Louisiana, after having invoked Amendments V, IX and XIV of the Constitution of the United States of America.

## CITATIONS TO OPINIONS BELOW

The refusal by the Supreme Court of Louisiana of the writs sought by petitioner March 3, 1958, not reported but appearing at page 47 of the certified copy of the transcript of the record filed herewith, and printed in the Appendix hereto, page 1.

The dissenting opinion of Chief Justice John B. Fournet of the Supreme Court of Louisiana, March 3, 1958, appearing at pages 48 and 49 of the certified copy of the transcript of the record filed herewith, and printed in the Appendix hereto, pages 2, 3.

The judgment of Hon. J. Bernard Cocke, Judge of Section "E" of the Criminal District Court for the Parish of Orleans, State of Louisiana, February 19, 1958, adjudging petitioner in contempt, appearing in the certified copy of transcript filed herewith at pages 33-38, and printed in Appendix hereto, pages 4-11.

## JURISDICTION

The refusal by the Supreme Court of Louisiana of the writs sought was entered March 3, 1958, as appears from page 47 of certified copy of transcript of record filed herewith and page 1 of Appendix hereto. Such refusal is final in Louisiana. (*City of Gretna v. Rossner*, 154 La. 117, 97 So. 335) Application for a re-hearing is not permitted.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3) as the said refusal is repugnant to the Constitution of the United States being in derogation of rights and privileges guaranteed by Amendments V, IX and XIV thereof.

Conceding that there is jurisprudence to the effect that the first ten Amendments to the Constitution of the

United States are not operative in State Courts. (*Maxwell v. Dow*, 176 U.S. 581; 44 L. Ed. 597), we believe with Mr. Justice Harlan (*Huartado v. California*, 110 U.S. 568; 28 L. Ed. 246; *Maxwell v. Dow*, *supra* at pp. 608 and 607 respectively), and many others, that this jurisprudence originally resulted from a forgetfullness, (real or perhaps dictated by seasonable expedience), of the fact that when these Amendments were adopted

> " • • • the Constitution of each State, with few exceptions, contained and still contains a Bill of Rights, enumerating the rights of life, liberty and property which cannot be impaired by the legislative department."
>
> (Mr. Justice Harlan in the *Huartado* case, *supra.*),

and from the same forgetfulness of the fact that the first ten Amendments to the Constitution merely reaffirmed

> " • • • that the privileges and immunities enumerated in these Amendments belong to every citizen of the United States" and that "they were universally so regarded prior to the adoption of the Fourteenth Amendment."
>
> (Mr. Justice Harlan in *Maxwell v. Dow*, *supra.*)

By no rule of reason can it be thought that an acknowledged pre-existing state of facts could be so abruptly changed by the adoption of an Amendment (XIV) the very language of which confirms the existence of these facts. Times have changed. There can be no cause now for any adroitly specious reasoning continuing the formerly expedient denial of rights and privileges existing, in what is now the United States, since the landing of the Pilgrim Fathers and which rights were vigorously reaffirmed in 1791.

## QUESTIONS PRESENTED

1. Whether the conviction of petitioner for contempt of court resulting from his refusal to answer certain questions before the Grand Jury of the Parish of Orleans, State of Louisiana and after having invoked his constitutional privileges, (Transcript of Record, pp. 11-14; Appendix pp. 16-19) is repugnant to Amendments V, IX and XIV of the Constitution of the United States of America.

1a. Whether said conviction is repugnant to Amendments V and IX of the United States Constitution, when the answers to questions propounded (Transcript of Record, pp. 11-14; Appendix pp. 16-19) might have furnished foundation for criminal and civil actions in the United States Court against petitioner. (Transcript of Record, pp. 29-32)

2. Whether the admitted cooperation between the State District Attorney (Parish of Orleans, Louisiana) and various Federal agencies with regard to investigation of public bribery and income tax evasion, (Transcript of Record, p. 16; Appendix, p. 22), the attendant widespread newspaper, television and radio publicity, (Transcript of Record, p. 15; Appendix, p. 21), the insinuating tenor of the questions propounded, (Transcript of Record, pp. 11-14; Appendix, pp. 15-20) and the nature of the setting wherein they were propounded (Transcript of Record, pp. 11-14; Appendix, pp. 15-20) justified petitioner in invoking his constitutional privilege against self-incrimination.

3. Whether Section 13, Article XIX, Louisiana Constitution, L.S.A.-R.S. 14:121 and L.S.A.-R.S. 15:468 (Appendix pp. 24, 25) are repugnant to Section 1, Amendment XIV of the Constitution of the United States in that the

purported immunity granted by said statutes is fictitious and restricted, leaving petitioner open to a wide variety (Municipal, State and Federal) of actions (criminal and civil) against him and thereby abridging the privileges and immunities guaranteed him as a citizen of the United States (Transcript of Record, pp. 29-32).

4. Whether the judgment rendered February 19, 1958 (Transcript of Record pp. 33-38; Appendix pp. 4-11.) ordering petitioner to answer questions propounded by Grand Jury concerning public bribery was repugnant to Amendments V, IX and XIV of the United States Constitution in that it would force petitioner to testify in effect against himself, he having been indicted for public bribery February 12, 1958. (Transcript of Record p. 44)

## *STATUTES INVOLVED*

Amendments V, IX and XIV (Section 1) of the Constitution of the United States; Article XIX, Section 13, of the Louisiana Constitution; Louisiana Revised Statutes —L.S.A.-R.S. 14:121, R.S. 15:468, and R.S. 15:11. Printed in Appendix pp. 24, 25.

## *HOW FEDERAL QUESTIONS RAISED*

On January 15, 1958 petitioner appeared before the Orleans Parish Grand Jury and refused to answer certain questions, claiming his "Constitutional Rights, both Federal and State," (Transcript of Record pp. 1, 11, 12, 13 and 14; Appendix pp. 16-19) and also stating his fear of "a civil suit or something like that." (Transcript of Record pp. 1 and 13; Appendix pp. 17, 18.)

On January 22, 1958 (Transcript of Record pp. 9-14;

Appendix pp. 12-20), the Grand Jury for the Parish of Orleans, State of Louisiana, filed a motion seeking to have petitioner adjudged in contempt for declining to answer said questions.

On February 10, 1958, petitioner filed an answer (Transcript of Record, p. 29) to the motion and rule for contempt in which he averred, among other things, that

(a) Being compelled to answer the questions under the circumstances and surroundings and facts existing at the time they were propounded would be an abridgement and denial of his rights under Amendments V, IX and XIV of the Constitution of the United States;

(b) Petitioner and his wife had been and were under investigation by the United States Revenue Service and others; had been required to sign waivers of prescription; and, at the time of the questions, eleven indictments had been returned by the United States Grand Jury against members of the New Orleans Police Department, three for income tax evasion and eight for perjury or false statements; (Transcript of Record, pp. 15-16; Appendix pp. 21, 22.)

(c) The so-called immunity extended by the District Attorney is limited strictly to offenses against bribery statutes and does not extend to anything else, is purely conditional, not binding on any successor, and, consequently, if petitioner were forced to answer the questions declined, and those that would inevitably follow, it would be a violation of the provisions of the Constitution of the United

States, particularly Section 1 of Amendment XIV thereof; (Transcript of Record, pp. 22-23—Memorandum of Authorities—and 32)

(d) The cooperation existing between the District Attorney for the Parish of Orleans, the Police Bureau of Investigation, the United States Attorney for the Eastern District of Louisiana, the Internal Revenue Service of the United States and its investigators, as attested by the eleven Federal indictments noted above in paragraph (b), the sixty odd criminal cases (not bribery) filed in the Criminal District Court for the Parish of Orleans against individuals allegedly engaged in business similar to that insinuated to petitioner; the seven suits for occupational licenses, for business similar to that insinuated to petitioners, each for well over a thousand dollars, on file in the Civil District Court for the Parish; and, the insinuating tenor of some of the questions propounded with reference to petitioner's son and brother were **facts and circumstances** ample to cause petitioner to fear that any answer to the questions propounded, and others that would inevitably follow, might tend to incriminate him and afford a link in a chain of evidence which could become the basis of proceedings, criminal and civil, against him under the laws of the United States and the State of Louisiana for matters unrelated to bribery and for which there existed no immunity statutes, and ample cause for him to declare that forced answers would be an abridgement of his constitutional rights under Amendments V, IX nd XIV of the Constitu-

tion of the United States. (For District Attorney cooperation, etc. see Transcript of Record page 16, Appendix page 22. For insinuating questions,—Transcript of Record pp. 11-12, Appendix pp. 15-20, Unenumerated Rights—Transcript of Record, p. 25—Memorandum of Authorities)

(e) Any doubt should be resolved in favor of petitioner (*Quinn v. U. S.*, 75 S. Ct. 668, *Hoffman v. U. S.*, 341 U.S. 479) or the very purpose of the privilege would be frustrated. (32 L.R.A. 133).

On February 10, 1958, an agreed Stipulation of Facts was filed, (Transcript of Record, pp. 9-17, Appendix, pp. 12-23), the matter was argued, taken under advisement, and, on February 19, 1958, Judge J. Bernard Cocke of Section "E" of the Criminal District Court for the Parish of Orleans, State of Louisiana, rendered a judgment (Transcript of Record, pp. 33-38; Appendix pp. 4-11) ordering petitioner to answer the questions propounded by the Grand Jury, to which ruling petitioner seasonably reserved Bill of Exception No. 1 (Transcript of Record p. 39) reiterating his plea of the ruling's repugnance to Amendments V, IX and XIV of the Constitution of the United States. Petitioner again declined to answer the questions for the same reasons, was adjudged in contempt, filed a Motion for a New Trial (Transcript of Record p. 41) which was overruled and Bill of Exception No. 2 reserved, reiterating former pleas, (Transcript of Record p. 42), was sentenced to serve ten (10) days in the Parish Prison, pay a fine of $100.00, and in default thereof serve an additional ten (10) days (Transcript of Record p. 5), and filed Notice of Intention to Apply for Writs (Transcript of Record pp. 5 and 43).

One week prior to conviction and sentencing of petitioner, February 12, 1958, the Grand Jury for the Parish of Orleans found an indictment against him for conspiring with others "to commit the crime of Public Bribery" which was filed with the Criminal District Court for the Parish of Orleans under No. 159-238. (Transcript of Record, p. 44).

Application for Certiorari, Mandamus and Prohibition was filed with the Supreme Court of Louisiana February 25, 1958 (Transcript of Record p 1) urging, among other things, the repugnance of the ruling and judgment of the District Court to Amendments V, IX and XIV of the Constitution of the United States.

On March 3, 1958 the Supreme Court of Louisiana refused the writs, Chief Justice John B. Fournet and Justice James D. Simon dissenting. (Transcript of Record p. 47; Appendix p. ). Chief Justice Fournet filed a dissenting opinion (Transcript of Record pp. 48-49; Appendix pp. 2, 3) in which he said:

> "Moreover, it is my opinion that the relator is entitled to the protection offered by the 5th and 14th amendments to the Constitution of the United States under the showing made".

On March 3, 1958 a Motion For Stay of Execution was filed with the Supreme Court of Louisiana and petitioner was granted 90 days within which to petition the Supreme Court of the United States for writ of certiorari, contingent upon bond for $200.00 being furnished, (Transcript of Record, pp. 50-52) and the bond was so furnished. (Transcript of Record p. 53)

## *STATEMENT OF CASE*

As the facts of the case pertinent to this petition are set out in detail in the section hereof entitled "How Federal Questions Raised", *supra*, it is unnecessary to repeat them here.

## *REASONS FOR GRANTING WRIT*

1. The conviction and sentencing of petitioner (Transcript of Record pp. 5 and 33-38) for contempt violates his privilege against self-incrimination (U.S. Cons. Amend. V) because:

(a) The questions he declined to answer, (Transcript of Record pp. 1, 11-14; Appendix pp. 15-20) and those that inevitably would have followed, were such that the answers thereto not only would have subjected him to possible criminal prosecution in the courts of the United States, but, also, would have tended to incriminate him.

> "Privilege against self-incrimination is not limited to admissions that would subject witness to criminal prosecution but also extends to admissions that might only tend to incriminate. U.S.C.S. Const. Amend. 5."
>
> *Emspak v. U. S.*, 75 S. Ct 687

(b) Answers to questions propounded "could have well furnished" links "in the chain of evidence needed to prosecute the witness for a federal crime", (quotes from *Emspak* case, *supra* and *infra*), especially when petitioner had signed waivers of prescription with Federal authorities. (Transcript of Record, pp. 15-16; Appendix pp. 20, 21.)

> "Questions concerning witness' associations fell within scope of privilege against self-incrimination, where to have revealed knowl-

edge about named individuals, all of whom had been previously charged with the Communist affiliations, could have well furnished a link in the chain of evidence needed to prosecute the witness for a federal crime, ranging from conspiracy to violate Smith Act to filing of false non-communist affidavit under Taft-Hartley Act

" 'To sustain the privilege', this Court has recently held, 'it need only be evident from the implications of the question, in the setting in which it is asked, that a respondent answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result', and nearly 150 years ago Chief Justice Marshall enunciated a similar test: 'Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the Court to be the true sense of the rule that no witness is compelled to furnish any one of them against himself'."

*Emspak v. U. S., supra.*

(c) Petitioner is the sole judge of whether the answers would criminate him, he alone knowing what they would be.

" * * * if the question be of such description that an answer to it may or may not criminate the witness, according to the purport of that answer, **it must rest with himself,** who alone can tell what it would be, to answer the question or not. If in such a case, he say upon his oath that his answer would criminate himself, **the court can demand no other testimony of the fact."**

Chief Justice Marshall in:

*U. S. v. Aaron Burr*, Fed. Cas. No. 14,692e.
(emphasis ours)

2. The admitted cooperation between the State District Attorney and various Federal agencies with regard to investigation of public bribery and income tax evasion, (Transcript of Record, p. 16; Appendix, p. 22.), the raging newspaper, television and radio publicity concerning this investigation, (Transcript of Record, p. 15; Appendix, p. 21), the insinuating tenor of the questions propounded, (Transcript of Record, pp. 11-14), and the inquisitorial nature of the setting wherein they were propounded (Transcript of Record, pp. 11-14; Appendix pp. 15-20.) were such facts and circumstances as to cause petitioner to fear that any answers might be found to be incriminating, (*Emspak v. U. S., supra*), and that the privilege against self-incrimination was under wrongful attack.

> "It is when the privilege of self-incrimination is **under attack** by those who **wrongfully conceive** of it as merely a **shield for the guilty** that **governmental bodies must be most scrupulous in protecting its exercise.**" (Emphasis ours)
>
> *Quinn v. U. S., supra.*

3. (a) Section 13, Article XIX of the Constitution of the State of Louisiana (Appendix, p. 24; Transcript of Record, p. 20) limits the immunity offered petitioner to the non-use, "in any judicial proceedings", of his testimony given "in any lawful proceeding against any one who may be charged with having committed the offense of bribery" (Quotes from Art. XIX, sec. 13, La. Const.), and any other interpretation or application, such as the herein judgment and conviction, is repugnant to Section 1, Amendment XIV, U. S. Constitution, and abridges petitioner's privilege of due process of law and his privilege against self-incrimination, each of which, among others, he enjoys as a citizen of the United States.

because the proceeding at which petitioner's testimony was sought was a Grand Jury investigation and NOT a proceeding against any one **"charged** with having committed the **offense** of **bribery"** (Quotes from Art. XIX—emphasis ours) or any other offense. (Transcript of Record, pp. 11-14; Appendix, pp. 15-20)

(b) The immunity offered by L.S.A.-R.S. 14:121 (Appendix, p. 25; Transcript of Record, p. 20) is limited to "the **offender**, under the public bribery etc. articles" who gives a sworn statement to the **"District Attorney charged** with the **prosecution** of the **offense"** (Emphasis ours), and who later "gives evidence tending to convict any other offender under those articles"; and the granting of this immunity is solely "at the discretion of said district attorney" and **only** for "the offense reported". (All quotes from R.S. 14:121; emphasis ours). From the Stipulation of Facts (Transcript of Record, pp. 9-17; Appendix, pp. 20-22) and the entire record herein it is apparent that the petitioner was NOT an "offender", the Grand Jury was NOT "the District Attorney", and the District Attorney was NOT engaged "with the prosecution of the offense". Interpreting R.S. 14:121 as applicable herein is certainly enforcing a law which abridges the privileges and immunities enjoyed by petitioner, (among which are those against self-incrimination and those unenumerated rights guaranteed by Amendment IX of the U. S. Constitution), and such interpretation is repugnant to Section 1, Amendment XIV of the U. S. Constitution.

(c) L.S.A.-R.S. 15:468 (Appendix, p. 25) is just as specific, stating that a "person may be compelled to testify" but **only** "in any lawful proceeding against another charged with commercial bribery, etc." As pointed out above, the attempt to make petitioner's refusal to

answer not justified by these statutes is a flagrant abridgement of his constitutional privileges and immunities.

By no stretch of the imagination can these statutes be said to grant immunity for offenses against municipalities, states or the Federal government, and the law books and reports are replete with authorities to the effect that a witness is not guilty of contempt when the only security offered is of such nebulous and impossible nature.

> "Although there are some earlier cases to the contrary, it is generally held that, under **immunity statutes providing only that testimony** given by a witness **shall not be used against him** in a criminal prosecution, one may stand upon his constitutional guaranty against being compelled to give incriminatory testimony and **refuse to testify when his testimony might furnish leads** to other testimony which would convict him." (Emphasis ours)
>
> *58 Am. Jur. Witnesses* p. 76, Sec. 90 (and numerous cases cited, including *Arndstein v. McCarty*, 245 U.S. 71, 65 L. Ed. 138; *Counselman v. Hitchcock*, 142 U.S. 547, 35 L. Ed. 1110)

> "But by the **weight of authority** and **better reason,** he will **not be compelled** to answer if the **only security** he has is that his **testimony** will **not be used against him,** since it may disclose **offenses hitherto unknown** and lead to the discovery of other evidence whereby he may be convicted." (Emphasis ours)
>
> 24 L.R.A., NS, 168, (citing *Counselman v. Hitchcock*, *supra*, and others).

4. The judgment complained of was rendered February 19, 1958. (Transcript of Record, pp. 33-38; Ap-

pendix, pp. 4-11) One week prior thereto, February 12, 1958, petitioner was indicted for conspiracy to commit public bribery. (Transcript of Record, p. 44) The judgment and sentence speak for themselves as a flagrant attempt to impinge upon the Constitutional guaranties which petitioner had invoked.

5. Amendment IX, U. S. Const. reads:

> "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people".

"The Ninth Amendment announces and acknowledges in a single sentence that (1) the individual, and not the State, is the source and basis of our social compact and that sovereignty now resides and has always resided in the individual; (2) that our Government exists through the surrender by the individual of a portion of his naturally endowed and inherent rights; (3) that every one of the people of the United States owns a residue of individual rights and liberties which have never been, and which are never to be surrendered to the State, but which are still to be recognized, protected and secured; and (4) that individual liberty and rights are inherent, and that such rights are not derived from the Constitution but belong to the individual by natural endowment". (*The Forgotten Ninth Amendment*, p. 1, Bobbs-Merrill, publishers)

The Ninth Amendment applies to the States. (*Eilen-Decker v. District Court*, 134 U.S. 31, 33 L. Ed. 801; *Palko v. Connecticut*, 302 U.S. 319, 82 L. Ed. 288).

What are some of the unenumerated rights? Since there is no list of them, we must resort to hypothesis.

Suppose Louisiana or any State should enact a stat-

**ute enabling one with a fancied claim against another to require that other person to disclose to him all details of their transactions PRIOR to the filing of a suit. There is no prohibition in any Constitution against such ridiculous procedure, but the right of privacy as to business transactions until aired by due process of law is inherent in all individuals. Is there any doubt as to what the Supreme Courts would do with such a statute?**

Yet, that is exactly the situation here. If petitioner were forced, under the provisions of the Louisiana Constitution and Revised Statutes relied upon by the Grand Jury for the Parish of Orleans, to answer the question about his occupation during 1950 to 1955 (Transcript of Record, p. 13; Appendix, pp. 15, 16, 18.) and other questions that would have followed, the provisions relied upon by the Grand Jury would in effect become just such a hypothetical statute as suggested above, for petitioner might lay himself open to a multiplicity of legal actions including suits by the United States Government for income tax, gambling tax, gambling stamp, etc. etc., which never would have been instituted but for his answer extracted under that cloak of fancied immunity. It is certainly not contempt to repulse this adroitly circumlocutory invasion of the inherent right of privacy guaranteed by Amendment IX of the U. S. Constitution.

## *CONCLUSION*

For the foregoing reasons, and because

> "Certiorari would be granted to determine whether defendant was being deprived of his liberty **without due process** in being punished for his **refusal** to give allegedly **self-incriminating testimony** even though there was in effect **an immunity statute.**" (Emphasis ours)
>
> *Regan v. People*, 75 S. Ct. 585.

and, in such circumstances as these,

> "The constitutional guaranty against self-incrimination must be accorded **liberal construction in favor of the right** it is intended to secure." (Emphasis ours)
>
> *Hoffman v. U. S.*, 341 U.S. 479, 95 L. Ed. 1118.

this petition for a writ of certiorari should be granted.

Respectfully submitted,

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